

SPECIAL CIVIL APPLICATION No 3230 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? -
 2. To be referred to the Reporter or not? - :
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? -
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? -
 5. Whether it is to be circulated to the Civil Judge? : NO
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SHRI B.A. JADEJA
Versus
THE STATE OF GUJARAT.

Appearance:

MR PV HATHI for Petitioners
MR KC SHAH for Respondents.

CORAM : MR.JUSTICE KUNDAN SINGH
Date of decision: 25/11/1999

ORAL JUDGEMENT

1. This petition has been filed for a direction to
the respondent no. 1 to prepare and publish the

Recruitment Rules of Royalty Inspectors as proposed by the office of the second respondent on 22nd July, 1974 and to quash and set aside the order passed in July 1981 appointing Shri B.M. Patel to the post of Royalty Inspector and to give effect to the said Recruitment Rules from the date of proposal and to promote all or any of the petitioners to the higher posts of Royalty Inspectors forthwith from the deemed date of promotion with all consequential benefits. Later on the prayer was amended and the petitioners sought for declaration that the resolution dated 26-4-1990 to the effect that it alters the original proposal dated 22nd July, 1974 in the matter of proportion and criteria is illegal, invalid and unconstitutional and for a direction to the respondents to give deemed date of promotion of the petitioners in the cadre of Royalty Inspectors with all consequential benefits and refixation of salary like arrears of pay, assigning seniority, etc.

2. The petitioners no.1 2 and 3 were selected and appointed to the post of Mines Supervisors working in the office of the second respondent in the year 1966-67. While the respondents no. 4, 7 and 8 came to be promoted on the aforesaid post in the year 1971 and 1973. In the old Rules of 1961 no promotion was available for the Mines Supervisor to the post of Royalty Inspector. Hence, they made several representation for their promotion and the proposal to amend the recruitment rules for promotion to the post of Royalty Inspector was made in the year 1974. But that proposal for amendment in the Recruitment Rules was pending and that was not being accepted by the department and hence this petition was filed.

3. The recruitment rules for the post of Royalty Inspectors in existence were framed by the executive instructions on 31-7-1961. The appointment of Royalty Inspectors was required to be made either by nomination from amongst the candidates who (a) hold B. Sc. degree in Geology or Diploma in Geology from the Indian Schools of Mines, Dhanbad or similar institute (b) have practical experience of two years and (c) were not more than 28 years old or by promotion of departmental candidates possessing the above qualifications and having experience in administrative matters regarding geology and mining. On the representation of the petitioners and some other persons the Government of Gujarat constituted the committee by its resolution dated 6-12-1972 to review the recruitment rules for various posts in various Government departments. The said committee was headed by Shri K.D. Buddha, I.A.S. The committee made the observations as

under :

"Aggrieved Government servant should have reasonable chance of promotion in his career to that he will not stagnate at any stage and his moral should not be affected adversely. A Government servant can normally be expected to have a career lasting 30 years. In this period of 30 years, if he is reasonably efficient he should help to have two promotions, if he is in the same post for more than 12 years it could be considered a case of stagnation."

4. The said committee recommended that the post of Royalty Inspectors may be filled up by promotion from the post of Mines Supervisors and the Mines Supervisors should be strictly considered to be a technical cadre and as there is certain elements of non-technical staff it was suggested that in the cadre of Royalty Inspectors, the ratio of direct recruitment to promotion may be kept as 1:2. The report of the committee with the recommendations was sent to the Government. Consequently, the Industries, Mines and Power Department by its letter dated 25th June, 1974 asked the second respondent to give his opinion and proposal for the recruitment rules for the post of Royalty Inspectors and the second respondent by his letter dated 22-7-1974 submitted the proposed recruitment rules for appointment of Royalty Inspectors to the Government for approval.

5. But those proposed recruitment rules remained unattended for about 14 years before the department concerned and the department tried to fill up the posts of Royalty Inspectors from the Geology Section so that the post of Royalty Inspectors may not be available for promotion to the petitioners. There was a cadre of Quarry Inspectors in the State of Saurashtra. The eligibility for the Quarry Inspector's was only matriculate and the Quarry Inspector was promoted to the post of Royalty Inspector though the Rules of 1961 do not permit the same. The petitioners were holding higher posts than the Quarry Inspectors. As such they were also entitled for promotion as Royalty Inspectors.

6. This Court by the order dated 6-4-1990 directed the respondent no. 1 to take decision on the proposal submitted by the respondent no. 2 on 22-7-1974 latest before 30-4-1990. It appears that on that basis the Government of Gujarat passed the resolution dated 26-4-1990 whereby amended the Rules for the post of Royalty Inspectors by promotion of Mine Supervisors

having proved merits and efficiency and the ratio of direct recruit and promotion shall be 2:1.

7. After coming into force the Rules, 1990, the petitioner sought for amendment in the petition and made supplementary prayer for declaration that the resolution dated 26-4-1990 be declared as illegal, invalid and unconstitutional to the extent it alters the original proposal dated 22-7-1974 and prayed for a direction to the respondents to give deemed date of promotion to all the petitioners in the cadre of the Royalty Inspectors with all consequential benefits.

8. Initially, the petition was filed for a direction to the respondents to frame the rules providing promotions for Mine Supervisor to the post of Royalty Inspectors. Anyhow, those Rules have been amended on 26-4-90 but those Rules required the promotion on the basis of the proved merit and efficiency with the ratio of direct recruit and promotion as 2:1. The amended Rules have been challenged on the ground that the amended Rules are unreasonable and unconstitutional and these Rules provide proved merit and efficiency and that was not required under the Rules 1961 nor it was recommended by the Committee or proposed by the respondents. Secondly, the Committee has recommended the ratio of direct recruit and promotion as 1:2. The criteria made in the new Rules is an unauthorized departure in the original recommendations and the proposals made in the year 1974. The concept of proved merit and efficiency is illegally and unauthorizedly inserted by the office of the second respondent which is within the administrative jurisdiction for this purpose and the action of the respondents in this regard is bias and prejudice against the petitioners and therefore the petitioners are not only entitled to get promotion on the post of Royalty Inspectors but are also entitled promotion from the deemed date as the said Rules were enacted and were in force in the year 1974 and there is no fault on the part of the petitioners but it is the fault on the part of the respondents. That is why the Rules have been framed after 16 years in the year 1990. Hence, the petitioners are entitled to the promotion from the deemed date as Royalty Inspectors with all consequential benefits.

9. Shri D.S. Chavda, Under Secretary to the Government, Industries Mines and Power Department, has filed affidavit-in-reply stating therein that for filling up the post by direct recruitment the educational qualification is B.Sc. degree in Geology or diploma in Geology from the Indian School of Mines, Dhanbad or

similar Institute with practical experience of two years in the field of mining. For filling up the post by promotion from the departmental candidates the educational qualification prescribed is the same as direct recruit with the experience of administrative matters regarding Geology and Mining. The cadre of Mines Supervisors consists of two categories of two personnel i.e. (i) those possess a degree or diploma preferably in Mining from the recognized University or Institute, i.e. those who are direct recruit and those who have worked as Quarry Inspectors and Clerks for more than three years and possess knowledge of mining field required Gujarat Mines and Mineral Rules, 1966 for those who are promotees. The recruitment to the post of Royalty Inspectors and Mines possessing technical qualification in mining cannot be promoted to the post of Royalty Inspector as the qualification prescribed even for promotional channel in the post of Royalty Inspectors is different than that prescribed for the post of Mines Supervisors. For the post of Royalty Inspector being technical post for which the qualification was prescribed was B.Sc. in Geology for direct recruitment and promotion, the Mines Supervisors could not be promoted as Royalty Inspectors because they do not possess the required qualification as per the Recruitment Rules. Hence, the Mines Supervisors cannot be promoted to the post of Royalty Inspectors as they do not possess technical qualification of Geology which is necessary requirement for the post of Royalty Inspectors. If it is not done as per the recommendations, efficiency in working of the Royalty Inspectors would adversely be affected. The rejoinder affidavit has also been filed.

10. Heard the learned counsel for the parties and perused the relevant papers on record.

11. Initially the writ petition was for a direction to the Government or the Department concerned to frame the Rules providing promotion to the Mines Supervisors to the post of Royalty Inspectors. That has been done by the resolution dated 26-4-1990. So far as the amended Rules regarding proved merit and efficiency and the ratio of direct recruit and promotees as 2:1 is concerned, it is the discretion of the Government or the Department concerned to accept the recommendations made by the Committee or by the Department. By the amended Rules, the provision for promotion of the Mines Supervisors to the post of Royalty Inspectors has been made and the criteria and ratio of direct recruit and promotees as 2:1 cannot be challenged in this petition as it has been

provided by the Government and Department after due consideration of the material before it and it cannot be said that this criteria and ratio provided by the Government in the Rules are illegal and violative of Article 14 and 16 of the Constitution of India.

12. The Department or the Government has to consider the qualifications, experience and nature of work for the promotion and hence it cannot be said that the criteria and ratio provided by the Government in the new Rules are illegal, unreasonable and unconstitutional.

13. In the last, the learned counsel for the petitioners submitted that even the petitioners are entitled to promotion from the date on which new Rules came in existence i.e. 26-4-1990 and this date should be fixed as deemed date for promotion of the petitioners as the recruitment either by promotion or direct recruitment has been stayed by this Court by the order dated 17-8-1981 at the initial stage and later on passed the order dated 6-3-90 which reads as under :

"Rule returnable on 13-3-1990. Miss Doshit waives services of rule. Meanwhile, the respondents are directed not to make any appointment to the posts in question."

14. On the basis of this order passed by this Court, the learned counsel for the petitioner submitted that the petitioners' promotion could have been considered on the enforcement of the new Rules i.e. 26-4-1990 as the Rules have already been framed and the provision the promotion has been provided for promotion of the petitioners' post "Mines Supervisors" has been provided to the post of the Royalty Inspectors. In the ratio of direct recruit and promotees as 2:1. The case of the petitioners for promotion may be directed to be considered from the date of enforcement of the new relevant Rules i.e. 26-4-1990. In case, this Court would have not passed the order dated 6-3-1990, the department concerned could have considered promotion of the petitioners on the basis of the new Rules framed. As such, the petitioners are entitled to for consideration of their promotion from the deemed date i.e. 26-4-1990. As this Court cannot direct the Government or the Department concerned to appoint or promote the petitioners at the most this Court can direct the respondents to consider promotion of the petitioners from the date 26-4-1990 in consonance with the new Rules.

15. Thus, this petition deserves to be allowed in part. Accordingly, this petition is partly allowed and

the respondents are directed to consider promotion of the petitioners from the date of enforcement of the new Rules i.e. 26-4-1990 with deemed date and if the petitioners were eligible for appointment, the respondents will consider the deemed date for appointment/promotion of the petitioners. Rules is made absolute to the aforesaid extent, with no order as to costs. Interim relief granted earlier shall stands vacated.

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/JVSatwara/